Public Knowledge

May 23, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

RE: Notice of *Ex Parte* presentation in: Docket No. 12-268

Dear Ms. Dortch:

On May 21, 2013, I spoke with John Leibovitz and Tom Peters with regard to the above referenced proceeding.

First, I stressed that, contrary to the statement of Commissioner Pai, there is no "consensus" to adopt the "Down from 51" FDD plan favored by AT&T, Verizon and NAB. All the plans proposed present technical challenges that have significant potential impacts on wireless competition and on the ultimate success of the auction. Further, although maximizing revenue for the U.S. Treasury cannot, by law, be the objective of the auction, it is instructive to note that the plan most favored by large incumbents is the plan that most likely to *reduce* revenue to the Treasury.

In this regard, I went over the points made in my recent blog post "First Reactions To The FCC's 600 MHz Band Plan Workshop," available at http://tales-of-the-sausage-factory.wetmachine.com/first-reactions-to-the-fccs-600-mhz-band-plan-workshop/. A copy of the blog post is attached.

Second, I expressed concern that market variation could severely impact the availability of TVWS in rural areas in a way never contemplated. In many sparsely populated rural areas, where there are few full power television stations, the Commission might reclaim nearly all the broadcast spectrum leaving none for rural broadband via the TVWS. But it is precisely in these areas where the availability of unlicensed TVWS spectrum is projected to have the greatest benefit for rural broadband, and where repurposing broadcast spectrum for licensed wireless service is least needed. It is generally agreed that the problem in rural areas is not a dearth of licensed spectrum, but economic circumstances that make licensed wireless unprofitable. Reclaiming vast amounts of rural broadcast spectrum would starve TVWS and thus worsen, rather than alleviate, the problem of rural wireless broadband. Nor would reclaiming this spectrum generate significant revenue.

Furthermore, it is extremely unlikely that equipment manufacturers would make equipment for a handful of rural licensees holding uplinks in sparsely populated areas for frequencies unused by larger providers in urban markets. Nor is there a global market for uplink facilities in the lower broadcast frequencies that could provide equipment for licensees. Rural licensees would therefore face the problem faced by rural 700 MHz A and B block licensees denied interoperability today, who cannot deploy systems because they lack affordable equipment.



1818 N St., NW
Suite 410
Washington, DC 20036

T 202.861.0020
F 202.861.0010
publicknowledge.org

On the other hand, limited market variability could have two beneficial effects. First, it could address the “hold out” problem of broadcasters in the most congested markets. Broadcasters would know that while they might constrain a market, their holding out for a higher price would not constrain the availability of spectrum in the band nationally. Second, it could provide potentially useful supplemental low-band uplink spectrum for those carriers that lack low-band spectrum.

At this stage, it is impossible to say whether market variability would be a net positive for competition and the success of the auction generally. The Bureau is to be commended for exploring this issue in a Public Notice. The Public Notice issued by the Bureau enhances transparency and facilitates a full exploration of all possible approaches and their respect trade offs, creating a richer and more robust record for any ultimate decision by the Commission. The criticism of incumbents eager to see their choice of band plan implemented is utterly unwarranted.

In accordance with the FCC’s *ex parte* rules, this document is being electronically filed in the above-referenced dockets today.

Sincerely,

_________________/s/_____________
Harold Feld
Senior V.P.
Public Knowledge

CC: John Leibovitz
Tom Peters